

04 WI-15

**DECISION  
AND  
FINDING OF NO SIGNIFICANT IMPACT  
FOR**

**BIRD DAMAGE MANAGEMENT IN WISCONSIN**

**I. INTRODUCTION**

The U.S. Department of Agriculture (USDA), Animal and Plant Health Inspection Service (APHIS), Wildlife Services (WS) and U.S. Fish and Wildlife Service (USFWS) released a "*Bird Damage Management in Wisconsin*" EA in October 2004 which analyzed potential environmental impacts to resolve bird damage problems in Wisconsin. The WS program receives and responds to a variety of requests for assistance from individuals, organizations, and agencies experiencing damage and other problems related to wildlife. Wildlife damage management is the alleviation of damage or other problems caused by or related to the presence of wildlife, and is recognized as an integral part of wildlife management (The Wildlife Society 1992). Ordinarily individual WS damage management actions are categorically excluded and do not require an environmental assessment (EA) (7 CFR 372.5(c), 60 Fed. Reg. 6000-6003, 1995). However, to evaluate and determine if there might be any potentially significant impacts to the human environment from Wisconsin WS' proposed bird damage management, this EA was prepared. The EA documented the need for bird damage management in Wisconsin and assessed potential impacts of various alternatives to respond to bird damage and other related problems.

The Multi-Agency Team (*i.e.*, WS, USFWS, Federal Aviation Administration (FAA), Wisconsin Department of Natural Resources (WDNR), and Wisconsin Department of Agriculture, Trade and Consumer Protection (WDATCP), meeting NEPA's interdisciplinary team requirement, cooperatively conducted the assessment of WS' bird damage management program in Wisconsin. The USFWS, FAA, WDNR and WDATCP also cooperated with WS to determine whether the proposed action is in compliance with relevant laws, regulations, policies, orders and procedures. All bird damage management is conducted consistent with: 1) the Endangered Species Act of 1973, including the consultations with the USFWS and WDNR, and 2) Executive Order 13186<sup>1</sup> and MOUs between USFWS, FAA, WDNR and WS, and 3) federal, State and local laws, regulations and policies. This Decision and Finding of No Significant Impact (FONSI) are based on the analysis in the EA.

**II. ALTERNATIVES ANALYZED IN THE EA IN DETAIL (Fully Evaluated)**

The following Alternatives were developed to analyze and respond to issues. Four (4) additional alternatives were considered but not analyzed in detail. A detailed discussion of the effects of the Alternatives on the issues is analyzed in the EA; below is a summary of the Alternatives.

**Alternative 1 – Continue the Current WS Adaptive Integrated Bird Damage Management Program (No Action/Proposed Action).**

The current and proposed program is an adaptive integrated WS bird damage management program for the protection of agricultural and natural resources, aquaculture, property, and public health and safety. It

<sup>1</sup> Executive Order 13186 directs federal agencies to protect migratory birds and strengthen migratory bird conservation by identifying and implementing strategies that promote conservation and minimize the take of migratory birds through enhanced collaboration between WS and the USFWS, in coordination with state, tribal, and local governments. A National-level MOU between the USFWS and WS is being developed to facilitate the implementation of Executive Order 13186.

is anticipated, based on historical information, that most of Wisconsin WS' bird damage management will be at livestock facilities to reduce livestock feed consumption and contamination by starlings, and reduce potential risk of disease transmission to livestock. Another important function of Wisconsin WS is to reduce potential aircraft/bird strikes at airports in Wisconsin to reduce human health and safety risks. In addition, other important functions of the Wisconsin WS program are the protection of property and aquacultural resources<sup>2</sup>.

The major goal of the program is to minimize bird-related losses. To meet this goal, WS will continue to respond to requests for assistance with either technical assistance or operational damage management when permitted by the USFWS and WDNR and when cooperative funding is available. Under the *Proposed Action* (Alternative 1), bird damage management would be allowed in the State on private or public property where a need has been documented and a cooperative agreement, *Agreement for Control*, Memorandum of Understanding (MOU) or other comparable documents has been completed and in coordination with the WDNR, USFWS, and tribal governments, as appropriate. Under a MOU signed between WS and the USFWS, WS has the responsibility for responding to and attempting to reduce damage caused by migratory birds. Under a MOU and cooperative agreement between WS and the WDNR, WS has the responsibility for responding to and attempting to reduce damage caused by migratory birds when funding allows.

The Integrated Wildlife Damage Management (WS Directive 2.105) approach implemented by WS will allow for the use of legally available methods, either singly or in combination, to meet requester needs for reducing bird damage. The current Wisconsin WS Program recognizes and analyzed the use of non-lethal methods as part of an integrated approach to resolve bird damage problems. Wisconsin WS considers non-lethal methods in each damage management strategy, if applicable, and preference is given to non-lethal methods when practical and effective (WS Directive 2.101). Agricultural producers, airport managers, property owners and others requesting assistance are provided information regarding the use of effective non-lethal and lethal techniques, as appropriate. Non-lethal methods include, but are not limited to, lure crops, environmental/habitat/behavior modification, decoy traps and other live traps, exclusionary devices, nest destruction, chemical repellents, and alpha chloralose. Lethal methods could include shooting, egg addling/destruction, snap traps, DRC-1339, and American Veterinary Medical Association approved euthanasia techniques, such as CO<sub>2</sub>. WS may also recommend hunting or USFWS Depredation Permits (DP) when deemed applicable.

WS generally only conducts bird damage management on a small portion of the properties under *Agreement* in any year. Although the area worked by WS is relatively small in relation to the State, the projects are considered important to the requesters and the cooperating agencies. The EA also addresses the impacts of damage management on areas where additional agreements with WS may be signed in the foreseeable future; the location where WS conducts activities may change depending on where damages occur, but the total area of activities is expected to remain relatively stable. WS' roles would be coordinated with the USFWS, WDNR, FAA, WDATCP, and American Indian tribes, as appropriate, and consistent with other uses of the area.

The No Action alternative is a procedural NEPA requirement (40 CFR 1502), is a viable and reasonable alternative that could be selected, and serves as a baseline for comparison with the other alternatives. The No Action alternative, as defined here, is consistent with the Council on Environmental Quality's (CEQ) (1981) definition.

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<sup>2</sup> The EA does not include actions that are authorized by the Public Resource Depredation Order (50 CFR 21.48). However, population dynamics information was used in the double-crested cormorant impact analysis (Chapter 4 of this EA) to determine any potential affects that may occur from the proposed action.

**Alternative 2 – Technical Assistance Only Program.** Under this alternative WS would only provide technical assistance and make recommendations when requested. Producers, property owners, agency personnel, or others could conduct bird damage management using traps, shooting, Avitrol<sup>3</sup>, or any non-lethal method that is legal.

This "*technical assistance only*" alternative places the immediate burden of operational damage management on State agencies, individuals and requesters. Individuals experiencing bird damage would, independently or with WS recommendations, carry out and fund damage management activities. Individual producers could implement bird damage management as part of the cost of doing business, or a State or other federal agency could assume a more active role in providing operational damage management assistance. Some agencies or individuals may choose not to take action to resolve wildlife damage. Other situations may warrant the use of legally available management methods because of public demands, mandates, or individual preference. Methods and devices could be applied by people with little or no training and experience, and with no professional oversight or monitoring for effectiveness. This in turn could require more effort and cost to achieve the same level of problem resolution, and could cause harm to the environment, including a higher take of non-target animals and illegal use of pesticides could be greater than present.

**Alternative 3 – No WS Bird Damage Management Program.** Under this alternative, the WS bird damage management program would be terminated (operational and technical assistance) on all land classes in Wisconsin. However, State and county agencies, and private individuals could conduct bird damage management but requesters of WS services would not have WS input. WS would not be available to provide technical assistance or make recommendations to livestock producers, airport and landfill managers, property owners or others requesting assistance. In some cases, damage management methods applied by non-WS personnel could be used contrary to their intended or legal use, or more than what is recommended or necessary.

A "*no control*" alternative was analyzed by the USFWS (USDI 1979) and was dismissed as an invalid alternative. A "*no control*" alternative was also evaluated in USDA (1997) to which this EA is tiered.

### III. MAJOR ISSUES ANALYZED IN THE EA

The EA describes the alternatives considered and evaluated. The following issues were identified as important to the scope of the analysis (40 CFR 1508.25).

- Cumulative Effects of WS Bird Damage Management on Target Species Populations
- Effects of WS Bird Damage Management on Non-target Species Populations, Including T/E Species
- Risks Posed by WS Bird Damage Management Methods to the Public and Domestic Animals
- Efficacy of WS Bird Damage Management Methods

### IV. ALTERNATIVES CONSIDERED BUT NOT ANALYZED IN DETAIL IN THE EA ARE THE FOLLOWING

- Compensation for Bird Damage Losses
- Bounties
- Short Term Eradication and Long Term Population Suppression
- Bird Damage Management Should Be Conducted Using Only Non-lethal Methods

### V. MONITORING

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<sup>3</sup> Avitrol could only be used by state certified pesticide applicators in Wisconsin.

WS' no action/proposed action is to reduce or minimize bird damage to agricultural and natural resources, aquaculture, property, and to safeguard public health and safety in Wisconsin. The Wisconsin WS program, in cooperation with the USFWS, FAA, WDNR and WDATCP, will monitor and report the WS take of all bird species annually to help ensure no adverse impact on the viability of any bird species. Wisconsin WS will use MIS data to track their removal of birds. USFWS and WDNR expertise will be used to determine the impact of total take on bird populations.

## **VI. PUBLIC INVOLVEMENT**

As part of this process, and as required by the CEQ and APHIS-NEPA implementing regulations, an announcement of the EA availability was made to the public through "Notices of Availability" (NOA) published in media and through direct mailings to parties that have specifically requested to be notified<sup>4</sup>. One hundred twenty-seven (127) letters were mailed to organizations, individuals, public agencies and American Indian Tribes announcing that the EA was available and the EA was posted on the USFWS website for review and comment. NOAs were also published in eight newspapers throughout the State. Seven responses were received from review of the EA. Comments from public review of the EA were reviewed for substantive issues and alternatives in developing this Decision. The analysis and supporting documentation are available for review at the USDA-APHIS-WS State Office, 732 Lois Drive, Sun Prairie, Wisconsin 53590-1100.

## **VII. AGENCY AUTHORITIES**

WS is the federal agency directed by law and authorized by Congress to reduce damage to agricultural and natural resources, property and to resolve public health or safety concerns caused by wildlife. WS' authority is derived from the Act of March 2, 1931, as amended (46 Stat. 1486; 7 U.S.C. 426-426c) and the Rural Development, Agriculture, and Related Agencies Appropriations Act of 1988 (Public Law 100-202, Dec. 22, 1987, Stat. 1329-1331 (7 U.S.C. 426c)). Under the Act of March 2, 1931, and 7 U.S.C. §426c, APHIS may carry out wildlife damage management programs, or enter into cooperative agreements with States, local jurisdictions, individuals and public and private agencies whereby they may fund and assist in carrying out such programs.

The USFWS is the primary federal agency responsible for conserving, protecting, and enhancing the Nation's fish and wildlife resources and their habitats. These responsibilities are shared with other federal, State, tribal, and local entities; however, the USFWS has specific responsibilities for threatened and endangered (T/E) species, migratory birds, inter-jurisdictional fish, and certain marine mammals, as well as for lands and waters they administer for the management and protection of these resources. The USFWS regulates the taking of migratory birds under the Migratory Bird Treaty Act (MBTA) (16 U.S.C. §§ 703-712, as amended), the Migratory Bird Reform Act of 2004<sup>5</sup>, and the Fish and Wildlife Improvement Act of 1978 (16 U.S.C. Sec. 712). The Acts authorize and direct the Secretary of the Interior to allow hunting, taking, and killing of migratory birds subject to the provisions of, and to carry out the purposes of, the four migratory bird treaties.

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<sup>4</sup> It is entirely possible that an urgent need, such as threats to the traveling public could require that action be taken prior to reaching a decision. None of the planners and decision-makers involved in this effort is precluded from considering comments filed in this process at any time (even after actions to deal with the threat have begun) and making appropriate adjustments to ongoing program operations.

<sup>5</sup> During the 2004 federal legislative session, the Migratory Bird Reform Act of 2004 was passed. When the procedures to implement the Migratory Bird Reform Act of 2004 are finalized, WS will comply.

The WDNR, under the direction of a Governor appointed Natural Resources Board, is charged by the Legislature with the management of the State's wildlife. The WDNR has the responsibility to manage all protected and classified wildlife in Wisconsin, except migratory birds and federally listed T/E species. The legal authorities of the Natural Resources Board and the WDNR are throughout Wisconsin Administrative Code. The Natural Resources Board's mission statement helps clarify and interpret the role of WDNR in managing natural resources in Wisconsin. They are:

- To protect and enhance our natural resources: our air, land and water; our wildlife, fish and forests and the ecosystems that sustain all life.
- To provide a healthy sustainable environment and a full range of outdoor opportunities.
- To ensure the right of all people to use and enjoy these resources in their work and leisure.
- To work with people to understand each other's views and carry out the public will.
- And in this partnership consider the future and generations to follow.

The WDATCP, under the direction of a Governor appointed nine member Board of private citizens and Secretary of the WDATCP, is specifically charged by the legislature with providing consumer and business information, handling complaints, providing agricultural development and marketing services, assisting agricultural production and much more. The mission of WDATCP is to serve the citizens of Wisconsin by assuring:

- The safety and quality of food
- Fair business practices for the buyer and seller
- Efficient use of agricultural resource in a quality environment
- Consumer protection
- Healthy animals and plants
- The vitality of Wisconsin agriculture and commerce

The FAA is the federal agency responsible for developing and enforcing air transportation safety regulations and authorized to reduce wildlife hazards at commercial and non-commercial airports. The FAA is responsible for setting and enforcing the Federal Aviation Regulations and policies to enhance public safety.

## **VIII. DECISION and RATIONALE**

I have carefully reviewed the EA and the public input resulting from public involvement and the EA review process. I believe the issues identified in the EA are best addressed by selecting Alternative 1 (*Continue the Current WS Adaptive Integrated Bird Damage Management Program* (No Action/Proposed Action) and applying the associated minimization, standard operating procedures and monitoring measures discussed in Chapter 3 of the EA. Alternative 1 provides the best range of damage management methods considered practical and effective, addresses the issues, and accomplishes WS' Congressionally directed activities. WS policies and social considerations, including humane issues, will be considered while conducting bird damage management. While Alternative 1 does not require non-lethal methods to be used, WS will continue to provide information and encourage the use of practical and effective non-lethal methods (WS Directive 2.101).

The analyses in the EA demonstrate that Alternative 1 provides WS the best opportunity to address the issues and had low impacts on target and non-target species. Alternative 1 best: 1) addresses the issues identified in the EA and provide the safeguards for public safety, and 2) allows WS to meet its obligations to the USFWS, FAA, WDNR and WDATCP and cooperating counties and residents of Wisconsin. Alternative 1 provides a mix of technical assistance, non-lethal and lethal methods. As a part of this Decision, the Wisconsin WS program will continue to provide biological and non-lethal management

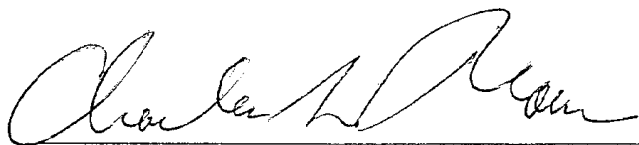
techniques information that could reduce damage. I have also adopted the EA as final because comments from public comments did not change the analysis.

### **FINDING OF NO SIGNIFICANT IMPACT**

The EA indicates that there will not be a significant impact, individually or cumulatively, on the quality of the human environment because of this proposed action, and that these actions do not constitute a major Federal action. I agree with this conclusion and therefore determine that an EIS will not be necessary or prepared. This determination is based on the following factors:

1. Bird damage management, as conducted in Wisconsin, is not regional or national in scope.
2. The proposed action will not have an impact on unique characteristics of the areas such as historical or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecological critical areas.
3. The proposed action will not significantly affect public health and safety. No accidents associated with WS bird damage management are known to have occurred in Wisconsin.
4. The effects on the quality of the human environment are not highly controversial. Although there is opposition to WS damage management, this action is not controversial in relation to size, nature or effects.
5. Minimization measures adopted as part of the proposed action lessen risks to the public and prevent adverse effects on the human environment and reduce uncertainty and risks.
6. The proposed action does not establish a precedent for future actions with significant effects. This action would not set precedence for additional WS damage management that may be implemented or planned in Wisconsin.
7. The number of animals taken (both target and non-target) by WS annually is small in comparison to the total population. Adverse effects on wildlife or wildlife habitats would be minimal.
8. No significant cumulative effects were identified by this assessment or other actions implemented or planned within the area.
9. Bird damage management would not affect cultural or historic resources. The proposed action does not affect districts, sites, highways, structures or objects listed in or eligible for listing in the National Register of Historic Places or will cause a loss or destruction of significant scientific, cultural, or historical resources, including interference with American Indian traditional uses or Sacred sites.
10. An evaluation of the proposed action and its effects on T/E species determined that no significant adverse effects would be created for these species. The proposed action will fully comply with the Endangered Species Act of 1973, as amended. Consultations with the USFWS and the WDNR have taken place and their input was used as part of the minimization development process.
11. This action would be in compliance with federal, State and local laws or requirements for damage management and environmental protection.

For additional information regarding this decision, please contact David A. Nelson, State Director, APHIS, WS, 732 Lois Drive, Sun Prairie, Wisconsin 53590-1100, or telephone (608) 837-2727.



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12/14/04  
Date

#### **Decision Literature Cited**

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WS Directive 2.101. Selecting Wildlife Damage Management Methods.

WS Directive 2.105. The WS Integrated Wildlife Damage Management Program.